

HOUSE BILL 5

By Cooper

AN ACT to amend Tennessee Code Annotated, Title 47
and Title 62, relative to ticketing for certain events.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 62, is amended by adding the following language as a new, appropriately designated chapter:

62-45-101. This chapter shall be known and may be cited as the “Fairness in Ticketing Act.”

62-45-102. The general assembly finds:

(1) The sports and entertainment industries are among Tennessee’s most important, attracting millions of paying fans to games, concerts and performances, generating hundreds of millions of dollars of economic impact, and creating a cultural brand known to fans around the world;

(2) A free market for tickets in the sports and entertainment industry is too often violated by bad actors in the ticket resale market who prey on fans of live entertainment in Tennessee;

(3) Professional scalpers routinely purchase as many of the best seats as possible the second they go on sale, often using computer software in violation of Tennessee law, and hide behind the anonymity of the Internet, for the sole purpose of reselling tickets to make a profit, depriving consumers of the opportunity to purchase tickets at the price set by performers, clubs, and arenas and depriving artists and sports clubs of the ability to set their own prices for their own performances;

(4) A free market depends on informed consumers, yet professional scalpers rarely inform consumers about original ticket prices, or that they are shopping on ticket resale sites where prices often exceed face value, or that the seats offered on these websites may not be in the possession of the professional scalpers; and

(5) The general assembly must act to ensure a free market for tickets whereby consumers know what they are buying, artists and teams have the ability to ensure that fans have access to great seats at fair prices, and deceptive, anonymous resale and Internet marketing practices are prohibited.

62-45-103. As used in this chapter:

(1) "Affinity group" means an identifiable group of people who are members of the same organization, or who are customers of the same person, and who receive special privileges as members of the group. Customers of a reseller shall not constitute an affinity group;

(2) "Athletic contest" means any intercollegiate sporting event; any sporting event staged by any professional club; any sporting event staged by any sanctioning body; or any sporting event organized under the rules and regulations of the Tennessee Secondary Schools Athletic Association, for which an admission price is charged by a place of entertainment;

(3) "Commissioner" means the commissioner of commerce and insurance;

(4) "Department" means the department of commerce and insurance;

(5) "Digger" means a person hired for the purpose of securing tickets by intimidating a prospective ticket purchaser waiting in line to procure event tickets;

(6) "Entertainment event" means any performance of music, comedy, dance, film, lecture, or theater; or any exhibition of art, for which an admission price is charged by a place of entertainment;

(7) "Face value" means the face price of a ticket, as determined by the event presenter and printed on the ticket, inclusive of all applicable taxes, service charges and fees;

(8) "Initial sale" means the first sale of a ticket for a specific entertainment event by the owner or operator of a place of entertainment, or of the entertainment event, or an agent of any such person. An initial sale also shall include the distribution of tickets to insiders by a producer, promoter, or place of entertainment, under an agreement for the presentation of an entertainment event;

(9) "Performance agent" means an employee of a place of entertainment or of its agent, or a producer, promoter, performer, or any other person associated with an event, who lawfully controls any tickets prior to their release for sale to the general public;

(10) "Online marketplace" means an Internet website that provides a forum for the buying and selling of tickets, but shall not include a reseller, ticket issuer, or an agent of an owner or operator of a place of entertainment;

(11) "Original purchaser" means a person who buys one (1) or more tickets to an athletic contest or entertainment event with the intention of using the ticket(s) solely for his or her own use, or the use of the original purchaser's invitees or agents;

(12) "Person" means any individual, partnership, firm, association, corporation, or combination of individuals of whatever form or character;

(13) "Place of entertainment" means any entertainment facility within this state, whether publicly or privately owned or operated, such as a theater, stadium, museum, arena, racetrack or other place where performances,

concerts, exhibits, or athletic contests are held and for which an entry fee is charged;

(14) "Pre-sale" means a sale of tickets, conducted prior to any sale to the general public to members of an affinity group by a person who is:

(A) An owner or operator of a place of entertainment;

(B) Acting with the permission of the owner or operator, a performance agent; or

(C) Not a reseller.

(15) "Producer" means a person who stages entertainment events, such as a performance, concert, exhibit, game, or athletic contest held at a place of entertainment;

(16) "Professional club" means any club organized under the rules and regulations of Major League Baseball, Minor League Baseball, the National Football League, the National Basketball Association, the Southern Professional Hockey League, or the National Hockey League;

(17) "Promoter" means a person who organizes financing and publicity for an entertainment event;

(18) "Public sale tickets" means tickets that are offered for sale to the general public and not subject to a hold back by a ticket issuer;

(19) "Resale" means a sale, other than a pre-sale or initial sale, of a ticket by a person other than the owner or operator of a place of entertainment, or an agent of any such person;

(20) "Resale website" means an Internet web site, or portion of a web site, that offers the resale of tickets to consumers;

(21) "Resell" means to offer for resale, or to consummate a resale;

(22) “Reseller” means any person, other than the owner or operator of a place of entertainment, or such person’s agent, who resells a ticket;

(23) “Sanctioning body” means any association that organizes and sanctions national sporting competitions, whether professional or amateur, including, but not limited to, the Professional Golf Association, United States Golf Association, NASCAR, the U.S. Tennis Association, World Tennis Association, U.S. Olympic Committee, and Ultimate Fighting Championship; and organizations that sanction individuals or teams for participation in international sporting competition on behalf of the United States;

(24) “Season ticket holder” means a person who purchases a package of one (1) or more tickets to a series of similar events at a place of entertainment pursuant to a plan offered by the place of entertainment or by a ticket agent for the place of entertainment;

(25) “Ticket” means a printed, electronic or other type of evidence of the right, option or opportunity to occupy space at or to enter or attend an entertainment event even if not evidenced by any physical manifestation of such right;

(26) “Ticket broker” means any person in the business of reselling tickets to events at places of entertainment in this state, and who charges a premium in excess of the face value of the ticket. “Ticket broker” does not include an individual who does not regularly engage in the business of reselling tickets, who resells less than sixty (60) tickets during any one-year period, and who initially obtained any tickets he or she sold to others for personal use, or the use of immediate family members, friends, or known acquaintances. Also, “Ticket broker” does not include any person operating an Internet web site whose

primary business is to serve as a resale marketplace whereby third parties can buy and sell tickets, and who does not otherwise engage in the business of reselling tickets; and

(27) "Ticket issuer" means any person, other than an online marketplace or reseller, that makes tickets available directly or indirectly, at an initial sale or pre-sale, to the general public, and may include the owner or operator of a place of entertainment, the producer or sponsor of an entertainment event, a sports team or sports league of teams participating in an entertainment event, a theater company, musical group or similar participant in an entertainment event, or an agent of any such person.

62-45-104. A ticket represents a revocable license, held by the person in possession of the ticket, to use a seat or standing area in a specific place of an athletic contest or entertainment event for a limited time. The license represented by the ticket may be revoked at any time, with or without cause, by the ticket issuer,

62-45-105.

(a) So that consumers of tickets for resale are fully informed as to the nature of their transactions, a ticket broker shall:

(1) Post at its established place of business, and on any web site operated or employed by the broker, the terms of the purchaser's right to cancel the purchase of a ticket from the ticket broker;

(2) Disclose to the purchaser the refund policy of the ticket broker should an athletic contest or entertainment event be canceled;

(3) Disclose to any prospective ticket resale purchaser, whether on the ticket broker's resale web site or in person, prior to any resale, the

difference between the face value of the ticket and the amount the ticket broker is charging the purchaser for such ticket;

(4) Refund any payment received by the sale of a ticket, if the athletic contest or entertainment event is canceled and not rescheduled; and

(5) Sell tickets only at its permanent office, place of business, or through a resale web site.

(b) It shall be a violation of this chapter for a ticket broker to employ, either directly or indirectly, any person as a digger. Further, in addition to the penalties and remedies set forth in this chapter, any person who acts as, or employs, a digger, either directly or indirectly, commits an unfair or deceptive act or practice affecting trade or commerce under the Tennessee Consumer Protection Act, compiled in title 47, chapter 18, part 1.

(c) Any ticket broker offering to resell tickets to an athletic contest or entertainment event through any printed, broadcast, or Internet advertising shall include in such offering the registration number issued by the department to such ticket broker.

62-45-106.

(a) Resale web sites offering tickets to any live entertainment event or athletic contest shall disclose, clearly and conspicuously, to any web site user the following information:

(1) The face value and exact location of the seat offered for sale, including any section, row, and seat number, or area specifically designated as accessible seating that is printed on the ticket;

(2) If operated by a ticket broker, the broker's active registration number issued by the department;

(3) Whether the ticket offered for sale is in the actual possession of the reseller and available for delivery;

(4) Whether the reseller is actively making an offer to procure the ticket; and

(5) If the ticket is not in the physical possession of the reseller, the period of time when the reseller reasonably expects to have the ticket in hand available for delivery.

(b) Resale web sites shall disclose to users, clearly and conspicuously, any other disclosures required by this chapter, including the nature of the resale web site as a secondary site, and that prices on the resale web site often vary from the initial sale price.

(c) No resale web site shall employ a URL using a trademark rightfully owned by another without the written consent of the trademark owner.

62-45-107. Notwithstanding any other provision of this chapter:

(a) No law shall prohibit the resale or offering for resale of a ticket or tickets to an athletic contest or entertainment event covered under this chapter by a ticket broker or a ticket brokers employees, agents, and assigns in a zone or zones within the area where such resale or offering for resale is authorized in writing by the organizer of the contest or event and the owner or operator of the place of entertainment where such contest or event is being held or to be held; and

(b) In order to preserve the rights of consumers to secure tickets to live entertainment events through safe and reliable means, nothing in this chapter

shall prevent operators of places of entertainment, event presenters, or their agents from utilizing any ticketing methods for the initial sale of tickets, through any medium, whether existing now or in the future.

62-45-108. In addition to any other penalties under this chapter, any person who violates this chapter commits a Class B misdemeanor offense, punishable only by fine.

62-45-109. Notwithstanding any of the foregoing, none of the provisions of this chapter shall apply to any sale of tickets made pursuant to the provisions of title 4, chapter 51.

62-45-110.

(a) Ticket brokers must register with the department within one hundred eighty (180) days of January 1, 2014, or within thirty (30) days of commencing business as a ticket broker in this state, whichever is later, and maintain an active registration with the department. In order to obtain and maintain an effective registration, a ticket broker shall:

(1) Maintain a permanent office or place of business in this state, excluding a post office box, for the purpose of engaging in the business of a ticket broker;

(2) Submit the ticket broker's business name, Tennessee business address, and any other information requested by the department on a form designated by the department;

(3) Pay an annual registration fee as determined by the department to be sufficient to reimburse the department for the requirements of this act;

(4) Renew the registration annually; and

(5) Register for sales and use tax purposes pursuant to title 67, chapter 6, part 6.

(b) Upon registration, the department shall issue each ticket broker a unique registration number, and publish a list of registered ticket brokers, including registration numbers, on the department's web site. No person shall register as a broker, nor may any person registering as broker employ any other person who has been convicted of or plead guilty to a felony offense, who has not been pardoned or had such person's citizenship restored pursuant to title 40, chapter 29, or who has been held in any court of record to have violated any provision of this chapter.

62-45-111. Any person aggrieved by violation of this chapter may file a written complaint with the division of consumer affairs or the attorney general and reporter. The attorney general and reporter is authorized to investigate and remediate any violation of this chapter, subject to the provisions of title 47, chapter 18.

62-45-112.

(a) The department shall keep a public record of all applications for registration made pursuant to this chapter.

(b) All official records of the department, or affidavits by the commissioner as to the contents of the records, shall be prima facie evidence of all matters required to be kept in the records.

(c) Except as otherwise provided by this section, the following shall be treated as confidential and may not be disclosed except by order of a court of competent jurisdiction or by permission of the applicant.

(d) Any person may file a complaint with the commissioner against a licensee alleging fraud, deceit, gross neglect, incompetence or misconduct by

any ticket broker. Complaints shall be made in writing, and shall be available for inspection and copying.

SECTION 2. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 3. This act shall take effect January 1, 2014, the public welfare requiring it.